



## BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

SUSAN BITTER SMITH - Chairman  
BOB STUMP  
BOB BURNS  
DOUG LITTLE  
TOM FORESE

RECEIVED  
AZ CORP COM  
DOCKET CONTROL

2015 JUL 9 PM 2 14

In the matter of:

DEER PARK DEVELOPMENT CORPORATION,

MARTY O'MALLEY and JULIE UNRUH  
O'MALLEY, husband and wife,

ROBERT D. BJERKEN,

Respondents.

DOCKET NO. S-20926A-15-0116  
Arizona Corporation Commission

DOCKETED

JUL 09 2015

DOCKETED BY

*RTU*

FOURTH

PROCEDURAL ORDER

**BY THE COMMISSION:**

On April 8, 2015, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, for Restitution, for Administrative Penalties, and for Other Affirmative Action ("Notice") against Deer Park Development Corporation, Marty O'Malley and Julie Unruh O'Malley, husband and wife (the "O'Malleys"), and Robert D. Bjerken (collectively "Respondents"), in which the Division alleged violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of stock.

The spouse of Marty O'Malley, Julie Unruh O'Malley ("Respondent Spouse"), is joined in the action pursuant to A.R.S. § 44-2031(C) solely for the purpose of determining the liability of the marital community.

The Respondents were duly served with copies of the Notice.

On April 23, 2015, Respondents Marty O'Malley and Julie Unruh O'Malley filed a Request for Hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306.

On April 24, 2015, Respondents Marty O'Malley and Julie Unruh O'Malley filed a Notice of Bankruptcy Filing. The Notice, filed through the O'Malleys' Special Litigation Counsel in Nevada, stated that the O'Malleys filed a Chapter 11 Bankruptcy Petition with the United States District

1 Bankruptcy Court, District of Nevada, on January 30, 2014, which was converted to a case under  
2 Chapter 7 on August 5, 2014. The Notice advised that 11 U.S.C. § 362(a)(1) prohibits  
3 commencement of judicial, administrative or other proceedings against the debtors.

4 On May 13, 2015, by Procedural Order, a pre-hearing conference was scheduled for June 3,  
5 2015.

6 On May 18, 2015, counsel filed a Notice of Appearance on Behalf of Respondents Marty  
7 O'Malley and Julie Unruh O'Malley. Counsel for the O'Malleys also filed a Response to Notice of  
8 Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order  
9 for Administrative Penalties and Order for Other Affirmative Action.

10 On June 3, 2013, a pre-hearing conference was held. The Division and the O'Malleys  
11 appeared through counsel. Counsel for the O'Malleys stated that his clients' bankruptcy matter is  
12 ongoing. Counsel for the Division stated the Division's position is that the bankruptcy has no effect  
13 upon these proceedings. The parties agreed to a hearing schedule.

14 On June 3, 2015, by Procedural Order, a hearing was scheduled to commence on November 2,  
15 2015.

16 On June 16, 2015, Respondent Bjerken untimely filed an Answer. The Answer was  
17 apparently sent by email on May 12, 2015, and received by the Division on May 20, 2015, as  
18 indicated by date stamp. Mr. Bjerken indicates that the Answer was filed late as a result of a hospital  
19 stay.

20 On June 19, 2015, Respondent Bjerken untimely filed a second Answer, again stating the  
21 filing was late due to a hospital stay.

22 On June 25, 2015, by Procedural Order, a procedural conference was scheduled to commence  
23 on July 9, 2015, to determine whether good cause exists for the late filing of the Answers from  
24 Respondent Bjerken and whether the Answers should also be considered a request for hearing.

25 On July 1, 2015, the Division filed its Response to Pleadings filed by Respondent Robert D.  
26 Bjerken.

27 On July 9, 2015, a procedural conference was held. The Division appeared through counsel.  
28 The O'Malleys appeared telephonically through counsel. Respondent Bjerken appeared pro per.

1 Respondent Bjerken attributed his late filing to his medical conditions and hospitalization. Mr.  
2 Bjerken stated his desire to participate in a hearing in this matter. Good cause was found to accept  
3 Mr. Bjerken's filings as a timely request for hearing. Mr. Bjerken did not object to the previously  
4 scheduled dates for the hearing and disclosure. The Division asserted that the Answers filed by Mr.  
5 Bjerken do not comply with A.A.C. R14-4-305 as neither Answer contains a response to all of the  
6 allegations made in the Notice. Mr. Bjerken was granted additional time to file an amended answer  
7 that complies with A.A.C. R14-4-305.

8 IT IS THEREFORE ORDERED that **the hearing remains scheduled to commence on**  
9 **November 2, 2015, at 10:00 a.m.,** at the Commission's offices, 1200 West Washington Street,  
10 Hearing Room No. 1, Phoenix, Arizona.

11 IT IS FURTHER ORDERED that **the parties shall also set aside November 3-6, 2015, for**  
12 **additional days of hearing,** if necessary.

13 IT IS FURTHER ORDERED that **Respondent Bjerken shall file an amended answer to**  
14 **the Notice by July 21, 2015.**

15 IT IS FURTHER ORDERED that that **the Division and Respondents shall exchange copies**  
16 **of their Witness Lists and copies of the Exhibits by September 3, 2015,** with courtesy copies  
17 provided to the presiding Administrative Law Judge.

18 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized  
19 Communications) is in effect and shall remain in effect until the Commission's Decision in this  
20 matter is final and non-appealable.

21 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules  
22 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

23 IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance  
24 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona  
25 Supreme Court Rule 42). Representation before the Commission includes appearances at all hearings  
26 and procedural conferences, as well as all Open Meetings for which the matter is scheduled for  
27 discussion, unless counsel has previously been granted permission to withdraw by the Administrative  
28 Law Judge or the Commission.

1 IT IS FURTHER ORDERED that, as permitted under A.A.C. R14-3-107(B), each party to  
2 this matter may opt to receive service of all filings in this docket, including all filings by parties and  
3 all Procedural Orders and Recommended Opinions and Orders/Recommended Orders issued by the  
4 Commission's Hearing Division, via email sent to an email address provided by the party rather than  
5 via U.S. Mail. To exercise this option, a party shall:

- 6 1. Ensure that the party has a valid and active email address to which the party has  
7 regular and reliable access ("designated email address");
- 8 2. Complete a Consent to Email Service form, available on the Commission's website  
9 ([www.azcc.gov](http://www.azcc.gov));
- 10 3. File the original and 13 copies of the Consent to Email Service form with the  
11 Commission's Docket Control, also providing service to each party to the service list;
- 12 4. Send an email, containing the party's name and the docket number for this matter, to  
13 [HearingDivisionServicebyEmail@azcc.gov](mailto:HearingDivisionServicebyEmail@azcc.gov) from the designated email address, to  
14 allow the Hearing Division to verify the validity of the designated email address;
- 15 5. Understand and agree that service of a document on the party shall be complete upon  
16 the sending of an email containing the document to the designated email address,  
17 regardless of whether the party receives or reads the email containing the document;  
18 and
- 19 6. Understand and agree that the party will no longer receive service of filings in this  
20 matter through First Class U.S. Mail or any other form of hard-copy delivery, unless  
21 and until the party withdraws this consent through a filing made in this docket.

22 IT IS FURTHER ORDERED that a party's consent to email service shall not become  
23 effective until a Procedural Order is issued approving the use of email service for the party. The  
24 Procedural Order shall be issued only after the party has completed steps 1 through 4 above, and the  
25 Hearing Division has verified receipt of an email from the party's designated email address.

26 IT IS FURTHER ORDERED that a party's election to receive service of all filings in this  
27 matter via email does not change the requirement that all filings with the Commission's Docket  
28 Control must be made in hard copy and must include an original and 13 copies.

1 IT IS FURTHER ORDERED that the Presiding Administrative Law Judge may rescind, alter,  
2 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by  
3 ruling at hearing.

4 DATED this 9<sup>th</sup> day of July, 2015.

5  
6   
7 MARK PRENY  
ADMINISTRATIVE LAW JUDGE

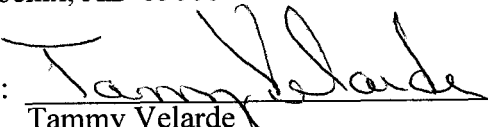
8 Copies of the foregoing mailed/delivered  
9 this 9<sup>th</sup> day of July, 2015, to:

10 Chad A. Hester  
11 WALLIN HESTER, PLC  
12 1760 E. Pecos Road, Suite 332  
Gilbert, AZ 85295  
Attorney for Respondents O'Malley

13 Robert D. Bjerken  
14 P.O. Box 2921  
Scottsdale, AZ 85252

15 Matthew Neubert, Director  
16 Securities Division  
ARIZONA CORPORATION COMMISSION  
17 1300 West Washington Street  
Phoenix, AZ 85007

18 COASH & COASH, INC.  
19 Court Reporting, Video and  
20 Videoconferencing  
1802 North 7<sup>th</sup> Street  
Phoenix, AZ 85006

21 By:   
22 Tammy Velarde  
Assistant to Mark Preny